

## **Committee on Technical Barriers to Trade**

### **Status**

The Agreement on Technical Barriers to Trade (TBT Agreement) establishes rules and procedures regarding the development, adoption, and application of voluntary product standards, mandatory technical regulations, and the procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. Its aim is to prevent the use of technical requirements as unnecessary barriers to trade. The Agreement applies to a broad range of industrial and agricultural products, though sanitary and phytosanitary (SPS) measures and specifications for government procurement are covered under separate agreements. It establishes rules that help to distinguish legitimate standards and technical regulations from protectionist measures. Standards, technical regulations and conformity assessment procedures are to be developed and applied on a non-discriminatory basis, developed and applied transparently, and should be based on international standards and guidelines, when appropriate.

The TBT Committee<sup>1</sup> serves as a forum for consultation on issues associated with the implementation and administration of the Agreement. This includes discussions and/or presentations concerning specific standards, technical regulations and conformity assessment procedures maintained by a Member that are creating adverse trade consequences and/or are perceived to be violations of the Agreement. It also includes an exchange of information on Member government practices related to implementation of the Agreement and relevant international developments.

### **Assessment of the First Five Years of Operation**

The TBT Agreement seeks to ensure that as tariffs are liberalized, governments do not replace tariff protection with capricious technical barriers. The TBT Agreement, for the first time, established multilaterally recognized rules and disciplines for the development and application of standards, technical regulations and conformity assessment procedures applied to all WTO Members. Although a form of the Agreement had existed since 1979 as a result of the Tokyo Round of trade negotiations, the expansion of its applicability to all Members was significant. Under the WTO, all Members assumed obligations for non-discrimination and transparency in the development and application of measures covered by the TBT Agreement.

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<sup>1</sup>Participation in the Committee is open to all WTO Members. Certain non-WTO Member governments also participate, in accordance with guidance agreed by the General Council. Representatives of a number of international intergovernmental organizations were invited to attend meetings of the Committee as observers: the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD); the International Trade Center (ITC); the International Organization for Standardization (ISO); the International Electrotechnical Commission (IEC); the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the FAO/WHO Codex Alimentarius Commission; the International Office of Epizootics (OIE); the Organization for Economic Cooperation and Development (OECD); the UN Economic Commission for Europe (UN/ECE); and the World Bank. The International Organization of Legal Metrology (OIML), the United Nations Industrial Development Organization (UNIDO), the Latin American Integration Association (ALADI), the European Free Trade Association (EFTA) and the African, Caribbean and Pacific Group of States (ACP) have been granted observer status on an *ad hoc* basis, pending final agreement by the General Council on the application of the guidelines for observer status for international intergovernmental organizations in the WTO.

The Agreement's notification procedures secure the right for interested parties in the United States to obtain early information on standards, technical regulations, and conformity assessment procedures in all WTO Members. It provides interested parties the ability to influence the development of such measures by providing written comments on proposed measures. Among other things, this helps to prevent the establishment of technical barriers to trade. The Agreement has functioned well in this regard, though discussions on how to improve the operation of the provisions on transparency are ongoing.

Other disciplines and obligations, such as the prohibition of discrimination and the call for measures to be no more trade restrictive than necessary to fulfill legitimate regulatory objectives, have been useful in evaluating potential trade barriers and in seeking ways to address them. The monitoring and oversight by the Committee has been critical. It has served as a constructive forum for discussing and resolving issues, and this oversight has perhaps reduced the need for more formal dispute settlement proceedings. To date, there has been no dispute settlement panel finding concerning the rights and obligations of the TBT Agreement.

*Transparency and Availability of WTO/TBT Documents:* A key opportunity for the public resulting from the TBT Agreement is the ability to obtain information on proposed standards, technical regulations and conformity assessment procedures, and to provide comments for consideration on those proposals before they are finalized. The Members are also required to establish a central contact point, known as an inquiry point, which is responsible for responding to requests for information on technical requirements or making the appropriate referral.

The NIST maintains a reference collection of standards, specifications, test methods, codes and recommended practices. This reference material includes U.S. government agencies' regulations, and standards of U.S. private standards-developing organizations and foreign national and international standardizing bodies. The inquiry point responds to all requests for information concerning federal, state and private regulations, standards and conformity assessment procedures. This office circulates to interested parties in the United States notifications of proposed regulations from foreign governments received under the TBT Agreement. The NIST also will provide information on central contact points for information maintained by other WTO Members. On questions concerning standards and technical regulations for agricultural products, including SPS measures, the NIST refers requests for information to the U.S. Department of Agriculture, which maintains the U.S. inquiry point under the Sanitary and Phytosanitary Agreement.

#### **U.S. Inquiry Point**

National Center for Standards and Certification  
Information  
National Institute of Standards and Technology  
(NIST)  
100 Bureau Drive, Stop 2150  
Gaithersburg, MD 20899-2150

Telephone: (301) 975-4040  
Fax: (301) 926-1559  
email: [ncsci@NIST.GOV](mailto:ncsci@NIST.GOV)

A number of documents relating to the work of the TBT Committee are available to the public from the WTO website: [www.wto.org](http://www.wto.org). TBT Committee documents are indicated by the symbols, "G/TBT/..." Notifications by Members of proposed technical regulations and conformity assessment procedures which are available for comment are issued as "G/TBT/Notif/..." (followed by a number). Parties in the United States who submit comments to foreign governments on their proposals are encouraged to provide a copy of those comments to the U.S. inquiry point at the address above. Minutes of the Committee meetings are issued as "G/TBT/M/..." (followed by a number). Submissions by Members (e.g., statements; informational documents; proposals; etc.) and other working documents of the Committee are issued as "G/TBT/W/..." (followed by a number). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and available to the public.

## Major Issues in 1999

The TBT Committee met three times in 1999. At the meetings, the Committee addressed implementation of the Agreement, including an exchange of information on actions taken by Members domestically to ensure implementation and ongoing compliance. A number of Members used the Committee meetings to raise concerns about specific technical regulations which affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. For example, in 1999, the United States expressed concerns with early drafts of European Commission Directives on Batteries and on Waste from Electrical and Electronic Equipment (WEEE). The United States also raised concerns with the EU's proposal to restrict the use of hushkitted and re-engined aircrafts (G/TBT/Notif.99.75; G/TBT/W/101); its Regulation 881/98 on "Traditional Terms" which would restrict the use of commonly-used wine labeling terms (G/TBT/W/119); and EC Regulation 1139/98 regarding the labeling of foods and food ingredients produced from genetically modified soy or maize (G/TBT/W/94; see also G/TBT/W/115 for a summary of related notifications). During the year, no Member raised a question about U.S. compliance with the TBT Agreement.

The Committee conducted its fourth Annual Review of the Implementation and Operation of the Agreement based on background documentation contained in G/TBT/7, and its Fourth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement) based on background documentation contained in WTO TBT Standards Code Directory, G/TBT/CS/1/Add.3 and G/TBT/CS/2/Rev.5. Decisions and recommendations adopted by the Committee are contained in G/TBT/1/Rev.6.

A primary focus of the Committee in 1999 was the work program arising from its First Triennial Review of the Operation and Implementation of the Agreement (G/TBT/5). The review provided the opportunity for WTO Members to review and discuss all of the provisions of the Agreement, which facilitated a common understanding of the rights and obligations. The review, which was concluded in November, 1997, highlighted a number of areas for further consideration by the Committee. The following summarizes the issues identified in the first triennial review and work in the Committee in 1999:

- < *Implementation and Administration of the Agreement by Members (Article 15.2):* Committee members agreed to make detailed presentations on the arrangements they have in place domestically to assure effective and continued compliance with the Agreement. This exchange is intended to assist all Members seeking ways to improve compliance, and should help to identify specific needs for technical assistance. To date, 57 notifications as required by Article 15.2 have been made by 72 Members containing information on the implementation and administration of the Agreement (G/TBT/2/Add.1-57). Ninety-six Members have notified the existence of their inquiry points in document G/TBT/ENQ/15.
- < *Preparation, Adoption and Application of Technical Regulations:* The Committee emphasized that good regulatory practice is essential to ensure technical regulations do not unnecessarily impede trade. For example, it is important to avoid promulgating technical regulations where they are not necessary. Where they are necessary, their preparation, adoption and application should be in accordance with the provisions of the Agreement. This requires coordination among trade and regulatory officials. In 1999, the Committee continued its exchange of information on Members' approaches to regulation.
- < *Operation and Implementation of Notification Procedures (Articles 2, 3, 5 and 7):* The Committee highlighted the importance for product suppliers and other interested parties of obtaining early information on proposals for new technical regulations and conformity assessment procedures, providing comments on them while still in draft, and having those comments considered before a

final rule is adopted. It therefore agreed that the procedural aspects of notification should be the subject of ongoing review.

In 1999, the Committee accepted a U.S. proposal to conduct a survey of Members to ascertain the extent to which they had access to electronic means for information exchange. The survey confirmed that a broad range of Members' inquiry points did have the facilities for electronic exchange of information and the Committee agreed on recommendations to encourage greater use of this medium (e.g., electronic publication of work programs on voluntary standards foreseen in Annex 3 of the Code of Good Practice).

- < *Code of Good Practice by Standardizing Bodies (Article 4; Annex 3):* The Committee noted that compliance with the Code of Good Practice was necessary to ensure that voluntary standards, whether developed by governments or private or regional bodies, do not create unnecessary barriers to trade. It also noted that the provisions of the Code were not applicable to the activities of international bodies. The Committee invited Members to share experiences on difficulties associated with voluntary standards and the nature of and reasons for deviations from relevant international standards. It agreed that the obligation to publish notices of draft standards containing voluntary labeling requirements was not dependent upon the kind of information provided on the label.

In 1999, the Committee continued its discussion of whether there should be an obligation to encourage private standardizing bodies to recognize equivalent standards of bodies in other Members' territories (along the lines of the obligation on Members in Article 2.7). Several Members have offered specific proposals that are under consideration. A proposal to change the recommended 60 days to be allowed for public comment on draft standards was also discussed.

- < *International Standards, Guides and Recommendations:* The Committee acknowledged that the Agreement accords significant emphasis to the development and use of international standards for preventing unnecessary trade barriers. It recognized, however, that trade problems could arise through, *inter alia*, the absence of international standards or their non-use due to possible outdated content. Further examination of such issues was warranted and Members were encouraged to bring specific examples to the Committee. The Committee also agreed to intensify its exchange of information with international bodies, with a view to ensuring that such standards emanate from processes consistent with the objectives of the Agreement (e.g., that standards be developed in an open and transparent process).

In November 1998 the WTO held an "Information Session of Bodies Involved in the Preparation of International Standards" to improve Committee Members' understanding of the procedures by which international standards are developed and the ongoing activities of these bodies, and to enhance these bodies' awareness of the ongoing discussions on international standards in the TBT Committee. The U.S. paper (G/TBT/W/64) outlined our interest in clarifying the Committee's understanding that, for purposes of the Agreement, international standards must result from a fair process of openness, transparency and consensus. A specific proposal is contained in G/TBT/W/75/Rev.1. Other Members also introduced proposals on this topic and on other issues relating to the development and use of international standards, all of which remain under consideration. In addition, Members continue to provide statements and written information on their experience in developing and using international standards, guides and recommendations.

- < *Conformity Assessment Procedures:* The Committee noted the growing concern with the restrictive effect on trade of multiple testing, certification and other conformity assessment procedures, and the call by industry for "one standard, one test." The Committee noted that the

supplier's declaration of conformity was recognized as saving costs, and that the recognition of the results of conformity assessment could be achieved through different approaches which might have different effects on trade. There was an emerging interest in concluding mutual recognition agreements (MRAs) as a means of facilitating trade, yet it was also noted that such agreements raised concerns for non-participants and overall questions about their utility in solving the problems of multiple testing and conformity assessment procedures. The Committee urged the use of common procedures for conformity assessment, such as international guides, as an essential basis for building confidence among parties.

The Committee continued to examine various approaches for solving the problems and costs of multiple requirements for conformity assessment. In June 1999, the WTO held a "Symposium on Conformity Assessment Procedures" to develop an improved understanding of the issues. The Symposium enabled Committee Members to learn from the perspectives and experience of a broad range of experts on the use of conformity assessment procedures for business transactions in the marketplace and as a tool to promote regulatory compliance. Information was obtained on agreements and arrangements which are evolving to facilitate trade and reduce compliance costs. In addition to the information received at the Symposium, Members have continued to provide information on their national experience and practice (e.g., the United States provided a paper on its use of Supplier's Declaration of Conformity in G/TBT/W/75). Members have also introduced proposals relating to the obligations concerning conformity assessment procedures which are under consideration.

- < *Technical Assistance (Article 11) and Special and Differential Treatment (Article 12):* The Committee agreed to continue to exchange information on assistance provided by Members, as well as to examine the specific needs of Members for assistance. Discussion of developing country needs and interests were also considered in the topics above.

At the Committee's request, the WTO Secretariat prepared a paper (G/TBT/W/103) to record the state of knowledge concerning the technical barriers to the market access of developing country suppliers, especially small and medium sized enterprises, as a result of standards, technical regulations and conformity assessment procedures.

The Agreement (Article 10.6) requires the WTO Secretariat to draw to the attention of developing country Members any notification relating to products of particular interest to them. In light of the information obtained in the Survey on the Electronic Facilities Available in National TBT Inquiry Points, the Committee agreed on an approach to facilitate implementation of this provision through the use of electronic mail.

## **Work for 2000**

*Second Triennial Review:* In 2000, the TBT Committee is required to complete its second triennial review of the Agreement. Article 15.2 obliges the Committee to "...review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations...Having regard, *inter alia*, to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods." The mandate for this review provides an additional incentive for the Committee to draw conclusions on the range of issues under discussion and to determine what action, if any, needs to be taken to improve or enhance compliance with the Agreement.

The United States will work in the second triennial review to resolve the issues of transparency and openness in the development and application of international standards; improve the understanding of various approaches to conformity assessment and the consideration of cost-saving approaches to

establishing conformity with technical regulations; assess the special needs of developing country Members (in concert with the Integrated Framework); and establish practical approaches to ensure effective implementation by all Members. USTR intends to solicit from the U.S. public additional views on U.S. objectives for the second triennial review in 2000.

The first triennial review in the TBT Committee, General Council discussions held in preparation for the 1999 Ministerial, and discussions at the Ministerial itself revealed significant interest (by developing countries in particular) in addressing the issues associated with participation in the development of international standards, and their use, when appropriate, as a basis for technical requirements applied domestically. These concerns will need to be addressed on a priority basis to secure ongoing compliance with the TBT Agreement and its continued relevance in addressing potential technical trade barriers.